IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting
Chapter VIII, Rule 32(7) (b))
Description of case

Crl. Rev. No. 69 of 2002 , decided on 17-11-2003.

Smt. Asha Pant & another Vs. State of Uttaranchal

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 17-11-2003 Initials of judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Revision No. 69/2002

1. Smt. Asha Pant W/o Late Kailash Chandra Pant

2. Dipin Pant S/o Late Kailash Chandra Pant

Both R/o Hydle Colony P.S. Kotwali
Pithoragarh

… Revisionists.

Vs.

State of Uttaranchal … Respondent.

Sri B.S.Adhikari, learned counsel for the revisionists.
Sri G.S. Sandhu, learned A.G.A. for the respondent.

Date: 17th November 2003.

ORAL JUDGMENT: (**Per: Hon'ble Irshad Hussain, J.)**

This revision application under section 397/401 of the Code of Criminal Procedure (for short 'Code') has been preferred against the order dated 3-8-2002, whereby the learned Sessions Judge, Pithoragarh allowed the application of the prosecution under section 319 of the 'Code' in Sessions Trial No. 16/2002 under section 306 I.P.C. and decided to proceed against the two other persons as accused (who are the two revisionists) for the offences which they appear to have committed.

2- Brief facts, relevant for the decision, are that Smt. Grishma Pant deceased was married to charge sheeted accused Nalin Pant on 20-3-2000. She died on 11.5.2002 under circumstances other than natual. Her brother informant Gaurav Pandey posted in Calcutta received information and came to Pithoragarh. He lodged the F.I.R. on 14.5.2002 alleging that six months after the marriage the husband Nalin Pant, mother-in-law Smt. Asha Pant and brother-in-law Dipin Pant of the deceased have started harassment of the deceased and ill-treated her for and in connection with dowry demand; that the deceased made complaint about all this to him and his mother from time to time; that some money and ornaments where given thereafter but they were not satisfied and continued to subject and deceased with physical and mental cruelty and that they have caused her death by administering her poisonous substance.

3- A case was registered and after investigation charge sheet was submitted under section 306 I.P.C. against the husband alone. The informant had also been complaining to higher authorities about the unfair investigation in the matter.

4- After framing of charge under section 306 I.P.C. against the husband the evidence of the informant Gaurav Pandey (P.W.1) was recorded on 29-7-2002. Before the cross examination of the witness could commence prosecution moved an application under section 319 of the 'Code' on that very day i.e. 29-7-2002 with a prayer that in view of the statement of the said witnesss the court may proceed against the mother-in-law and brother-in-law of the deceased against whom the allegations of harassment and ill-treatment for and in connection with the demand of dowry have also been made. The learned Sessions Judge considered the evidence of P.W.1 recorded in the case in the light of the allegations made in the F.I.R. and on being satisfied that the requirement of section 319 of the 'Code' stand satisfied decided to proceed against these two persons, the revisionists in the case, under sections 304-B/498-A I.P.C. and ¾ of the Dowry Prohibition Act.

5- In assailing the legality and propriety of the impugned order the learned counsel for the revisionist made four-fold submissions:-

(1) That the word "evidence" in section 319 of the 'Code' means evidence not only on record but also the evidence and material collected by the Investigating Officer during the investigation and on consideration of all such material an opinion is to be formed for invoking power under the said section and this had not been done in this case.

(2) That P.W.1 Gaurav Pandey was not present in the town when the deceased committed suicide and the belated F.I.R. was lodged by him with after-thought allegations although his mother and other relations remained present in the hospital where the deceased was admitted and they did not suspect and fowl play in the death.

(3) That the power under section 319 of the 'Code' is an extraordinary power and should be used very sparingly and only for compelling reaons, which requirement does no sand satisfied in this case.

(4) That the charge against the accused has been framed under section 306 I.P.C. whereas the revisionists have been summoned for

offences punishable under sections 304-B and 498-A I.P.C. and ¾ Dowry Prohibition Act.

6- In support of the first contention the learned counsel for the revisionists placed reliance on a decision of the Apex Court in the matter of **Rakesh and another Vs. State of Haryana; (2001) 6 Supreme Court Cases 248** and submitted that the learned Sessions Judge should have disposed of the application under section 319 of the 'Code' after considering the evidence on the record as well as the material collected during the investigation. Perusal of the impugned order reveal that the learned Sessions Judge considered the evidence of P.W.1 and import of the allegations of the F.I.R. and formed an opinion that prima facie it appear that these two persons (revisionists) have also committed the offences as alleged. Considering the positive evidence of P.W.1 which is in corroboration to the version of the F.I.R., there appear to be no illegality in the approach adopted by the learned Sessions Judge in passing the impugned order. No doubt the ration of the reported decision is that the word "evidence" occurring in sub-section (1) of section 319 of the 'Code' would also include the material collected during the investigation besides the evidence on record but it does not lay down the law that power under section 319 of the 'Code' has to be exercised only after taking into account the evidence on record as well as the material collected by the Investigating Officer. Therefore, the first contention has no merit and the propriety of the impugned order has snot been assailed.

7- In regard to the second contention it need to be stated that the evidence of P.W.1 is definite and categorical about the role of these revisionist apart from the charge-sheeted accused (husband) in subjecting the deceased to harassment and cruelty for and in contention with the demand of dowry. It is now well settled that whatever is disclosed and said by a victim of dowry death to her close relatives in regard to the circumstances leading to her unnatural death is a piece of admissible evidence. P.W.1 has mentioned all about the complaint made to him also by his sister in regard to the unlawful demand and illegal actions of the husband and the revisionists in the written report (F.I.R.) and has also reiterated the same thing in his evidence in the case. Considering this, at this stage, it is immaterial if on the date of the occurrence he was away

from Pithoragarh and came there after three days to lodge the report as stated above. Since the evidence of P.W.1 being definite and cogent prima facie point to the involvement of the revisionists also in the commission of the crime, there appear no illegality in the inference as drawn by the learned Sessions Judge in passing the impugned order.

8- So far as the third submission is concerned, the broad principle pointed out does not admit of any contrary view, but the above evidence and circumstances speak for themselves in favour of the propriety of the impugned order. There were compelling reasons to proceed against the revisionists also for the serious offence alleged and it can safely be said that the extraordinary power has rightly been exercised under section 319 of the 'Code' by the learned Sessions Judge. In the face of the facts of the case the reported decisions of the Apex Court in the case of **Michael Machado and another Vs. C.B.I. and another; [2000(2) J.I.C. 5 S.C.]** and in the case of **Smt. Rukhsana Khatoon Vs. Shekhawat Hussain and others; [2000(2) Crimes 55 (S.C.)]** pressed into service by the learned counsel have no application here. In the first mentioned case the Apex Court laid stress on the requirement that the evidence to proceed against such other person not already arraigned as an accessed should provide reasonable prospects of the case, as against the newly brought accused, ending in conviction of the offence concerned rather than mere suspicion or doubt of commission of the crime by such person. As stated above the evidence of P.W.1 has been positive and definite and consistent with the allegations of the F.I.R. and, therefore, the decision was not based on mere suspicion or doubt against the revisionists. In the second mentioned decision the emphasis is that to proceed against the person not charge-sheeted there should be sufficient evidence indicating his involvement in the offence and further that the power to proceed should be used very sparingly. There can be no gain saying that the evidence in this case fulfil the said requirement and I am not impressed by the argument that the evidence of P.W.1 is not sufficient to prima facie indicate the involvement of the revisionists in the offence alleged. It is a case in which extraordinary power under section 319 of the 'Code' was required to e exercised and this had been done by the impugned order, the same possess status of legality and propriety.

9- With regard to he fourth point it need to be stated that in view of the statement of P.W.1 and the allegations of the F.I.R. the revisionists have rightly been summoned for offences under sections 304-B/498-A I.P.C. and ¾ Dowry Prohibition Act. If the charge against the accused has been framed under section 306 I.P.C. the same is not final and law permits alteration of the charge, which if necessary can also be done in this case, as and when the defect if any, is pointed out on the basis of the evidence and the allegations of the F.I.R. against the accused. Merely because the court has decided to proceed against the revisionists for offences as stated above it would not be legally justified to assail the very propriety of the power exercised under section 319 of the 'Code' by the learned Sessions Judge.

10- In view of above there being no merit in this revision application, the same is liable to be dismissed. However, in the first instance the order of issuance of non-bailable warrants against the revisionists instead of issuing summons to them to appear and participate in the proceedings as accused was not warranted. Therefore, it is in the fitness of things that the N.B.W. need not to be issued against the revisionists and instead it is directed that in the first instance the learned Sessions Judge shall issue summons, fixing a date of appearance, against them so that they may be able to appear and submit bail application, which under the circumstances of the case and powers exercised under section 319 of the 'Code' may be disposed of on merit expeditiously.

11- The revision application is dismissed with the above observation.

(Irshad Hussain, J.)

ISB